

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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| MICHAEL H. KIM, v. WALTER D. NELDER, ECR TRUCKING, LLC, "JOHN DOES 1-5", and "ABC COMPANIES 1-5", (all being fictitious designations), Defendants. | Plaintiff, CIVIL ACTION - LAW No. 1:20-CV-16451 |
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**DEFENDANTS WALTER NELDER AND ECR TRUCKING, LLC'S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants, Walter D. Nelder and ECR Trucking, LLC (Removing Defendants), by and through counsel, submits this Notice of Removal of this action from the Superior Court of New Jersey, Bergen County to the United States District Court District of New Jersey and in support thereof, states as follows:

REMOVAL IS TIMELY UNDER 28 U.S.C. § 1446

1. This action was initially commenced by Plaintiff, Michael H. Kim, in the Superior Court of New Jersey, Bergen County, on February 7, 2020. *See* Plaintiff's Complaint, attached as **Exhibit "A."**

2. The action arises out of a motor vehicle accident that occurred on August 15, 2018, on the eastbound side Interstate 95 North, in the Borough of Fort Lee, in the County of Bergen, in the State of New Jersey. *See Exhibit "A," ¶¶ 1-3.*

3. This Notice of Removal is being filed within thirty (30) days after receipt by Removing Defendant ECR Trucking, LLC of Plaintiff's Complaint which was served on October

27, 2020, and it is removable in accordance with 28 U.S.C. § 1446(b)(3). *See* Acceptance of Service on behalf of Removing Defendant, ECR Trucking, LLC, attached as **Exhibit “B.”**¹

4. Removing Defendants filed their Answer to the Complaint on November 17, 2020. *See* Removing Defendants’ Answer to the Complaint, attached as **Exhibit “D.”**

5. Pursuant to 28 U.S.C. § 1446(b)(d), upon filing of this Notice of Removal, Removing Defendants will file a Notice of Filing of Notice of Removal in the State Court action pending in the Superior Court of New Jersey, Bergen County, and will provide written notice to Plaintiff. *See* Notice of Filing of Amended Notice of Removal, attached as **Exhibit “E.”**

DIVERSITY OF CITIZENSHIP EXISTS UNDER 28 U.S.C. § 1332

6. Plaintiff, Michael H. Kim, is a citizen of the State of New Jersey with an address of 261 Tietjen Avenue, in the City of Englewood, in the County of Bergen, in the State of New Jersey. *See* **Exhibit “A.”**

7. Defendant, ECR Trucking, LLC is a limited liability company organized and existing under the laws of the State of Ohio with a principal place of business located at 673 Center Street West, Unit B, Warren, Ohio 44481. This entity is a single member LLC with Anthony Ford as its sole member; he resides at 673 Center Street West, Unit B, Warren, Ohio 44481. Said entity does not have any parent companies.

8. Defendant, Walter D. Nelder is a citizen of Ohio and resides at 4007 Southern Boulevard, Youngstown, OH 44512.

9. Therefore, diversity of citizenship exists under 28 U.S.C. § 1332.

¹ Removing Defendant, Walter D. Nelder was served with the Complaint on June 27, 2020. *See* Affidavit of Service on said Defendant, attached hereto as **Exhibit “C.”**

AMOUNT IN CONTROVERSY EXCEEDS \$75,000

10. Plaintiff's Complaint alleges that he was severely and permanently injured. *See Exhibit "A."*

11. Plaintiff's counsel has communicated an initial demand of \$200,000. *See* email from Plaintiff's counsel attached as **Exhibit "F."**

12. Therefore, the amount in controversy exceeds the jurisdictional threshold of \$75,000, exclusive of interest and costs, required by 28 U.S.C. § 1332(a).

DIVERSITY JURISDICTION IS SATISFIED

13. Based upon the above, this Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that Plaintiff's Complaint presents a case where the amount in controversy is alleged to exceed \$75,000 and the controversy exists between citizens of different states.

14. Removing Defendants will promptly file a copy of this Notice with the Clerk of the Superior Court of New Jersey, Bergen County in the State Court Action as required by 28 U.S.C. § 1446(d) and provide written notice to Plaintiff.

15. Venue is proper in that the events or omissions giving rise to the claim occurred in Bergen County, New Jersey, which is situated in this Judicial District. *See* 28 U.S.C. § 1391(b)(2).

16. In filing this Notice of Removal, Removing Defendants do not waive any defenses that may be available to them.

17. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

Respectfully submitted,

SALMON RICCHEZZA SINGER & TURCHI LLP



By: _____

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**Attorneys for Defendants,
Walter D. Nelder and ECR Trucking, LLC**

Dated: November 18, 2020

CERTIFICATE OF SERVICE

I, David J. Jones, Attorney for Defendants, Walter D. Nelder and ECR Trucking, LLC hereby certify that I served a true copy of the foregoing Notice of Removal on the foregoing counsel by U.S. Mail, postage pre-paid:

Shane Alexander Sullivan, Esquire
JAE LEE LAW, P.C.
2050 Center Avenue, Suite 120
Fort Lee, NJ 07024
Attorney for Plaintiff, Michael H. Kim

SALMON RICCHEZZA SINGER & TURCHI LLP



By: _____

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**Attorneys for Defendants,
Walter D. Nelder and ECR Trucking, LLC**

Dated: November 18, 2020